

ORDINANCE NO. 1.99

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING CHAPTER 36 OF THE MOUNTAIN VIEW CITY CODE
TO ADD A BELOW-MARKET-RATE HOUSING PROGRAM

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN:

Section 1. Article X is hereby added to Chapter 36 and shall read as follows:

"ARTICLE X. BELOW-MARKET-RATE HOUSING PROGRAM.

SEC. 36.80. Council findings.

Housing prices and rents have increased at a significantly higher rate than general wages. The lack of affordable housing in Mountain View forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion in Mountain View and adjacent communities. The lack of affordable housing has made it more difficult to recruit workers from out of the area, in general, especially workers in lower-paying jobs, potentially affecting the economic vitality of the community; and

New housing developments do not, to any appreciable extent, provide housing affordable to low- and moderate-income households, and continued new development which does not include housing for low- and moderate-income households will serve to further aggravate the current shortage of affordable housing by reducing the small remaining supply of undeveloped land. The below-market-rate program serves to implement state law in order to meet the city's share of the regional housing need. The housing element of the general plan includes a goal to provide housing opportunities for people of all economic levels (Goal E); a policy supporting the development of reasonably priced housing (Policy 13); and Action 13.b, which calls for implementation of a below-market-rate (BMR) program in which new housing developments over a certain size provide at least ten percent (10%) of the units to low- and moderate-income households. The proposed below-market-rate housing program will balance the needs of the City and the goals of our general plan while having a minimum impact on the investment interests of the landowners and developers. The program is required by the public necessity and general welfare, and promotes the orderly development of the City.

SEC. 36.81. Definitions.

a. "Affordable housing" means housing which costs a low- or moderate-income household no more than approximately thirty percent (30%) of its gross monthly income. Costs included in the calculation of income for ownership housing are monthly mortgage principal and interest payments, homeowners' insurance, property taxes and homeowner association fees, where applicable. Costs included in the calculation of income allocated to rental housing are monthly rent.

b. "Below-market-rate (BMR) unit" means an ownership or rental unit under this program which is affordable to households with low or moderate incomes as defined in this chapter.

c. "Density bonus" means an entitlement to build additional residential units above the maximum number of units permitted by the applicable zoning designation or precise plan.

d. "In-lieu fee" means a fee paid by a developer into the City's housing fund in place of providing the required below-market-rate units.

e. "Market-rate unit" means a housing unit or the legal lot for such unit offered on the open market at the prevailing market rate for purchase or rental.

f. "Gross household income" means the household income of all adult members of the household:

(1) "Moderate-income household" means a household whose gross income is between eighty percent (80%) and one hundred percent (100%) of the median household income, adjusted for size, for Santa Clara County as published periodically by the state department of housing and community development.

(2) "Low-income household" means a household whose gross income is between fifty percent (50%) and eighty percent (80%) of the median household income, adjusted for size, for Santa Clara County as published periodically by the state department of housing and community development.

(3) "Very low-income household" means a household whose gross income is less than fifty percent (50%) of the median household income, adjusted for size, for Santa Clara County as published periodically by the state department of housing and community development.

(4) If the indexes referenced in this section, or successor indexes, are no longer published by the State Department of Housing and Community Development, then a successor index shall be selected by the city manager. In selecting the successor

index, the city manager shall choose an index published by a federal, state or county agency that most closely corresponds with the previous index.

g. "Resale controls" mean legal restrictions by which the price of below-market-rate units and the eligibility of purchasers or renters shall be restricted to ensure that the unit remains affordable to moderate-income households.

h. "Residential development" includes, without limitation, detached single-family dwellings, duplexes, multiple-family dwelling structures, condominium or townhouse developments, condominium conversions and land subdivisions intended to be sold or rented to the general public. "Mixed projects" shall mean projects containing both rental units and for sale units.

i. "Zoning permit" means any of the several discretionary permits described in Chapter 36 of the Mountain View City Code authorizing land uses, development, construction or alteration of uses or buildings within a zoning district.

SEC. 36.82. General requirements.

a. Percentage requirement. All residential developments subject to the BMR program requirements shall provide at least ten percent (10%) of the total number of dwelling units or parcels within the development as BMR units or pay a fee in lieu thereof, according to the terms of this article.

b. Size of project. The BMR requirement shall apply to new or converted residential developments with three (3) or more ownership units; five (5) or more rental units; or mixed projects of six (6) or more residential units.

c. In-lieu fees for fractions of units. If the calculation of BMR units results in a fraction of a unit, either an in-lieu fee shall be paid to the city's housing fund or the development shall provide an additional unit to satisfy the requirement. The in-lieu fee shall be based on a formula that considers the difference between the price of market-rate units and the price of below-market-rate units as specified in the BMR administrative guidelines.

d. Developments with nine or fewer units. For residential developments with nine or fewer units, the developer may elect to either pay an in-lieu fee or provide a BMR unit.

e. Concurrent development. All BMR units in a residential development and phases of a development shall be constructed concurrently with or prior to the construction of market-rate units.

f. Location and design of BMR units. All BMR units shall be reasonably dispersed throughout the project and shall contain, on average, the same number of bedrooms and shall be comparable to the design of the market-rate units in terms of appearance, materials, and finished quality of the market-rate units in the project. There shall not be significant identifiable differences between BMR and market-rate dwelling units which are visible from the exterior of the dwelling units and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. BMR units shall have the same access to project amenities and recreational facilities as market rate units.

g. Targeted households. All BMR rental units shall be rented only to qualified low-income households, and all BMR ownership units shall be sold only to qualified moderate-income households pursuant to procedures and guidelines established by the city.

h. Term. BMR units shall be maintained as affordable housing for a period of at least fifty-five (55) years.

i. No density bonus. Compliance with the provisions of this article does not entitle a residential development to a density bonus.

j. Administrative guidelines. The city shall adopt, by resolution, BMR administrative guidelines necessary for the implementation of the provisions of this article.

k. Administration. The BMR program shall be administered by the Community Development Department or its designee.

SEC. 36.83. Resale controls on ownership units.

In order to maintain the availability of the housing units constructed pursuant to the requirements of this article during the term of the BMR limitation, the following resale controls shall apply to units sold by the original purchaser and all subsequent purchasers:

a. The price received by the seller of a BMR unit shall be limited to the lesser of:

(1) The original purchase price increased by an amount equal to one-third (1/3) of any cumulative increase in the consumer price index for all urban consumers for the San Francisco-Oakland-San Jose area since the date of the previous sale, with adjustments for any substantial capital improvement expenditures or loss in value due to deterioration resulting from deferred maintenance or specific damage; or

(2) An amount equal to a price affordable to a household earning one hundred percent (100%) of median income; or

(3) The appraised value.

b. BMR units offered for sale or sold pursuant to the requirements of this article by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. The city or its designee may assign its right to an individual private buyer who meets the eligibility criteria for BMR units.

c. The BMR units shall be sold and resold from the date of the original sale only to persons determined to be eligible for BMR units according to the terms of this article.

d. The owners of any BMR unit shall incorporate as a part of the grant deed conveying title of any such BMR unit a declaration of restrictions, stating each of the resale controls imposed pursuant to this article, subject to the approval of the city attorney. The city attorney may also require a separate notice of below-market-rate resale controls and restrictions, or other notice document, subject to the city attorney's approval, to be recorded against any BMR dwelling unit subject to this article. The grant deed and any other recorded documents as required by the city attorney pursuant to this article shall afford the grantor, grantee and/or the city the right to enforce said resale controls.

e. For the first resale after the fifty-five (55) year term, a BMR ownership unit may be sold as a market-rate unit, but the difference between the BMR and market-rate unit prices must be deposited in the city's housing fund. After the fifty-five (55) year term, a purchaser of the unit who pays market rate shall not be subject to the provisions of this article.

SEC. 36.84. Determination of rents for rental units.

The monthly rental rate for each BMR unit shall be within the range of fifty percent (50%) to eighty percent (80%) of county median income and be based on no more than thirty percent (30%) of the qualifying tenant's gross monthly income, according to the procedures set forth in the BMR Housing Program Guidelines. The rent range of fifty percent (50%) to eighty percent (80%) of county median income may be adjusted annually to reflect adjustments in the median household income published periodically by the state department of housing and community development for Santa Clara County.

SEC. 36.85. Eligibility requirements.

a. The city or its designee shall select potential occupants of BMR units from a list of those persons qualified on the basis of household income, relationship between household size and the size of available units, and further criteria and procedures to be established by the city in the BMR administrative guidelines.

b. Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow, in a form acceptable to the city or its designee, that said unit is being purchased and shall be maintained as the purchaser's primary place of residence.

c. The household income of each renter of a BMR unit shall be verified annually by the city or its designee to confirm the household's continued eligibility for the unit.

SEC. 36.86. Housing fund.

A housing fund is hereby established for the deposit of all in-lieu fees and other penalties and payments made to the city under the BMR program. The purpose of the fund is to assist in providing housing that is affordable to very low, low- and moderate-income households and cover administrative costs of the BMR program.

SEC. 36.87. Enforcement.

a. The provisions of this article shall apply to all agents, successors and assigns of an applicant proposing or constructing a residential development governed by this article. No zoning permit, tentative subdivision map or occupancy permit shall be issued for a residential development after March 15, 1999 unless it is in compliance with the terms of this article.

b. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to costs and expenses for enforcement of the provisions of this article, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys fees.

c. Any individual who sells or rents a restricted unit in violation of the provisions of this article shall be required to forfeit all monetary amounts so obtained in excess of the allowed resale price as set forth in Section 36.83 or rental rates as set forth in Section 36.84. Such amounts shall be added to the city's housing fund.

SEC. 36.88. Appeals.

Appeals of a BMR condition in a zoning permit or parcel or subdivision map shall be to the community development director or designee. The director shall hold a public hearing to consider any appeals in accordance with the procedures of Chapter 36, Section 36.49.5. Appeals of any decision of the community development director pursuant to this program may be made to the city council in accordance with Chapter 36, Article VIII.

SEC. 36.89 Grandfather provision.

The following residential projects shall be exempt from the provisions of this article:

a. Projects for which a valid zoning permit has been issued and is in effect as of March 15, 1999; or

b. Projects for which an official zoning permit application, consisting of all required and supplemental materials, has been submitted to and accepted by the community development department by March 15, 1999."

Section 2. The provisions of this ordinance shall be effective sixty (60) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 8th day of December, 1998, and thereafter adopted at the Regular Meeting of said Council, duly held on the 12th day of January, 1999, by the following roll call vote:

AYES: Councilmembers Faravelli, Kasperzak, Lieber, Noe, Stasek and Mayor Zoglin

NOES: None

ABSTAINED: Councilmember Ambra

ABSENT: None

NOT VOTING: None


ATTEST:

APPROVED:


ANGELITA M. SALVADOR
DEPUTY CITY CLERK


MARY LOU ZOGLIN
MAYOR

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular meeting held on the 12th day of January, 1999 by the foregoing vote, and was published in the San Jose Post Record by reference on the 8th day of January 1999 and posted in three prominent places in said City.


Deputy City Clerk
City of Mountain View

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